Direct Press Modern Litho, Inc. *and* United Industry Workers Local 424, a division of United Industry Workers District Council 424, Petitioner and Local 918, International Brotherhood of Teamsters, AFL–CIO. Case 29–RC–8574

June 29, 1999

DECISION ON REVIEW AND ORDER

BY MEMBERS FOX, LIEBMAN, AND BRAME

This case involves a conflict of policies between the Federal Bankruptcy Code and the Board's contract-bar doctrine. On March 21, 1996, the Regional Director for Region 29 issued a Decision and Direction of Election in which, inter alia, he found no contract bar to the petition in this proceeding. Thereafter, in accordance with Section 102.67 of the National Labor Relations Board's Rules and Regulations, the Employer filed a timely request for review of the Regional Director's decision, asserting that his determination was erroneous because the Employer's collective-bargaining agreement with Teamsters Local 918 (the Intervenor), as extended by order of a Federal bankruptcy court, operated to bar the petition. By order dated May 8, 1996, the Board granted the Employer's request for review.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has carefully considered the entire record in this case, including the brief on review filed by the Employer, and has decided to reverse the Regional Director's contract-bar determination. As explained below, we hold that, as a matter of accommodation between the competing policies of the Act and the Federal Bankruptcy Code, the bankruptcy court's 6-1/2-month extension of the contractual parties' agreement constituted a bar to the petition.

Facts

The facts of this case are more fully detailed in the Regional Director's decision.[1] In brief, the Employer is engaged in the business of document printing and related services. The Intervenor currently represents, and United Industry Workers Local 424 (the Petitioner) seeks to represent, certain of the Employer's employees. The most recent collective-bargaining agreement between the Employer and the Intervenor was effective by its negotiated terms from April 27, 1995, until April 27, 1996. In August 1995, the Employer filed for Chapter 11 reorganization under the Bankruptcy Code, 11 U.S.C. sections 1101 et seq., and subsequently moved before the bankruptcy court for rejection of the collective-bargaining agreement pursuant to section 1113(c) of the Code. By unpublished order dated December 1, 1995, the court, granting the Employer's motion, unilaterally modified certain terms of the agreement. The modifications included an extension of the agreement's expiration date from April 27, 1996, until November 17, 1996.[2]

The Petitioner filed its representation petition in this case on January 31, 1996. This was within the open period for the filing of petitions pursuant to the agreement bargained by the Employer and the Intervenor,[3] but not within any new open period which may have been created by the court's extension of the agreement's expiration date. The Employer and the Intervenor, relying on the court's extension of their agreement, argued before the Regional Director that the petition was contract barred. The Regional Director rejected this contention, reasoning that the court's unilateral extension of the collective-bargaining agreement did not provide an appropriate basis for finding the petition barred. He also concluded alternatively that the court's extension of the agreement did not constitute an effective contract bar in light of the "premature extension" rule developed under the Board's contract-bar doctrine.

Relevant Policies

When the circumstances are appropriate, the existence of a collective-bargaining agreement will preclude, or bar, a Board representation election involving employees covered by the contract. The Board's contract-bar doctrine is intended to achieve "a finer balance between the statutory policies of stability in labor relations and the exercise of free choice in the selection or change of bargaining representatives." *Appalachian Shale Products Co.,* 121 NLRB 1160, 1161 (1958). Its "fundamental premise [is] that the postponement of employees' opportunity to select representatives can be justified only if the statutory objective of encouraging and protecting industrial stability is effectuated thereby." *Pacific Coast Assn. of Pulp & Paper Mfrs.*, 121 NLRB 990, 994 (1958). Thus, in general, the doctrine's dual rationale is to permit the employer, the employees' chosen collective-bargaining representative, and the employees a reasonable, uninterrupted period of collective-bargaining stability, while also permitting the employees, at reasonable times, to change their bargaining representative, if that is their desire. It is worth noting that the contract-bar doctrine "is not compelled by the Act or by judicial decision thereunder. It is an administrative device early adopted by the Board in the exercise of its discretion as a means of maintaining stability of collective bargaining relation-

[1] Pertinent portions of the Decision and Direction of Election are attached as an appendix.

[2] There is a split of judicial opinion with respect to a bankruptcy court's authority to modify a collective-bargaining agreement under sec. 1113(c) of the Bankruptcy Code in lieu of a rejection determination. See *In Re Garofalo's Finer Foods, Inc.,* 117 B.R. 363, 368–370 (Bkrtcy.N.D.Ill. 1990) (contractual modifications permissible within court' discretion); cf. *In Re Alabama Symphony Assn.*, 155 B.R. 556, 571–573 (Bkrtcy.N.D.Ala. 1993) (Bankruptcy Code does not authorize contractual modifications as an alternative to rejection). Our decision here assumes that the bankruptcy court acted within its legitimate authority in ordering modifications of the collective-bargaining agreement.

[3] See generally *Leonard Wholesale Meats*, 136 NLRB 1000 (1962).

ships." *Ford Motor Co.*, 95 NLRB 932, 934 (1951). The Board has discretion to apply a contract bar or waive its application consistent with the facts of a given case, guided overall by our interest in stability and fairness in collective-bargaining agreements. See, e.g., *Carpenters Local 1545 v. Vincent*, 286 F.2d 127, 131 (2d Cir. 1960). Cf. *Terrace Gardens Plaza v. NLRB*, 91 F.3d 222 (D.C. Cir. 1996).

The "premature extension" rule is one of many components of the contract-bar doctrine. Generally, should the parties to a collective-bargaining contract agree, during its term, to extend the contract's expiration date, the Board considers the agreement prematurely extended, and a representation petition will not be found contract barred if filed during the open period dictated by the agreement's original termination date. See, e.g., *Auburn Rubber Co.*, 140 NLRB 919, 920 (1963); *Deluxe Metal Furniture Co*., 121 NLRB 995, 1001 (1958). The rationale here is to afford employees who wish to change collective-bargaining representatives and outside unions who wish to represent the employees a reasonable measure of predictability in scheduling their organizational activities and campaigns. *Auburn Rubber Co.*, supra at 921.

More broadly, the basic policy of the Act is the protection of employees' right to choose collective-bargaining representatives and the promotion of collective bargaining, in order to maintain industrial peace by mitigating, if not eliminating, labor disputes affecting interstate commerce. Congress determined that this policy is instrumental in avoiding obstructions to the economic flow of interstate commerce. See generally Section 1 of the Act. The contract-bar doctrine, of course, proceeds from this elemental view. The essential policy of Chapter 11 of the Bankruptcy Code is to provide shelter for the debtor in economic distress, permitting its successful rehabilitation, in order to prevent the debtor from going into liquidation, with the accompanying loss of jobs and possible misuse of economic resources which liquidation entails. *NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 527, 528 (1984). When circumstances arise which present a conflict between the underlying purposes of the Act and the Code, the issue must be resolved in a way that accommodates the policies of both Federal statutes. Id. at 535, 541 (Justice Brennan, concurring in part and dissenting in part).

Discussion

The issue is whether, in the context of our obligation to accommodate the operation of the Act with that of the Bankruptcy Code, it is appropriate to find that the 6-1/2-month extension of the collective-bargaining agreement ordered by the bankruptcy court constituted a contract bar to the Petitioner's representation petition. We note initially that, to an extent, the bankruptcy court's order is *consistent* with Board policy. Thus, the court's contract extension and other modifications clearly were designed to stabilize the collective-bargaining relationship between the contractual parties. The court's action provided predictable terms and conditions of employment for the benefit of the Intervenor and the employees as well as the Employer, for at least some portion of the Employer's period of financial rehabilitation. The specific conflict between the Act and the Code arises not with regard to the desirability of stable collective-bargaining relations, but with our obligation to protect employees' right to change their bargaining representative through the Board's election process.

The court's extension of the agreement by 6-1/2 months does not eliminate, but merely delays the employees' right to choose. In the circumstances here, where the salutary goal of collective-bargaining stability has been enhanced by the Employer's dire financial condition, we do not think that such a short-term postponement is inappropriate, and in fact it is justifiable. See *Pacific Coast Assn.*, supra. In a context requiring that we acknowledge the Bankruptcy Code's competing, legitimate statutory interest, this delay does not, in our view, cause substantial harm to the employees' exercise of their right to choose a bargaining representative.[4]

None of the cases on which the Regional Director relied in finding a contract bar to be improper are apposite here. For example, *German School of Washington, D.C.*, 260 NLRB 1250, 1256 (1982), involved contractual conditions unilaterally imposed by a *foreign* government, not a conflict of two statutory policies formulated by the laws of the United States. Further, the "premature extension" rule does not alter our view of the appropriate accommodation of policies here. Given the clear termination date of the contract extension ordered by the court, there is more than a reasonable measure of predictability concerning the open period for filing a new representation petition and the scheduling of prospective organizational activities by the employees and the Petitioner or other outside unions.[5]

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[4] Member Fox also notes that the court's imposition of concessionary contract terms, over the union's objections, has no doubt undermined the union's status as bargaining representative in the eyes of the employees, since the union has been shown to be powerless to affect the terms and conditions of their employment. As the Board has stated in other contexts, employees join unions in order to secure collective bargaining; thus, if a union has been deprived of the opportunity to bargain on behalf of the employees, "it is altogether foreseeable that the employees will soon become dissatisfied with the union, because it apparently can do nothing for them." *Lee Lumber & Building Material Corp.*, 322 NLRB 175, 177 (1996), enf. denied on other grounds 117 F.3d 1454 (D.C.Cir. 1997). To direct an election under these circumstances, when employee satisfaction with the union is likely to be at a low ebb for reasons outside the union's control, would be an unfair test of the Union's support and would be inconsistent with the goal of promoting stability in bargaining relationships.

[5] We do not pass in this decision on the effect a longer contract extension imposed by the bankruptcy court would have had on the appropriate accommodation of federal policies. Similarly, we do not consider the effect of any subsequent contract extension by the court. In

Accordingly, we find it appropriate to conclude that the contract extension mandated by the bankruptcy court constituted a bar to the Petitioner's representation petition.

ORDER

The petition in Case 29–RC–8574 is dismissed.

MEMBER BRAME, dissenting.

Contrary to my colleagues, I would affirm the Regional Director's Decision and Direction of Election. The Regional Director applied well-established contract-bar principles to find that the election petition filed in this case was timely filed and that an election should be held. In reversing the Regional Director, the majority grafts yet another exception onto the Board's contract-bar doctrine and unjustifiably prevents the unit employees from expressing their wishes concerning their union representation.

The Employer and the Intervenor were parties to a collective-bargaining agreement which was effective by its terms from April 28, 1992, to April 27, 1995. In 1995, the parties agreed to extend that agreement for 1 year with certain modifications (the 1995–1996 agreement). On August 29, 1995, the Employer filed a Chapter 11 bankruptcy petition. Thereafter, the Employer has operated its business as a debtor-in-possession. In connection with its bankruptcy reorganization, the Employer sought various concessions from the Intervenor and, when the Intervenor refused to agree to the Employer's proposals, filed a motion with the U.S. Bankruptcy Court for the Eastern District of New York seeking authorization to reject the 1995–1996 agreement. On December 1, 1995, the bankruptcy court entered an order modifying the 1995–1996 agreement and extending it until November 17, 1996.[1] On January 31, 1996, the Petitioner filed a petition seeking to represent the unit employees currently represented by the Intervenor. The Employer and the Intervenor contend that the petition is untimely because it was filed during the term of the current collective-bargaining agreement as extended by the bankruptcy court.

The Board's contract-bar doctrine generally prohibits the filing of election petitions during the term of a collective-bargaining agreement. *Hexton Furniture Co.,* 111 NLRB 342 (1955). However, a petition by a rival union may be filed during the "open period" preceding the expiration date of a current agreement. *Leonard Wholesale Meats,* 136 NLRB 1000 (1962). In order to protect the right of employees to choose their bargaining representative at reasonable and predictable intervals, the Board has held that the parties to an agreement may not deprive employees of the right to vote on their representation by "prematurely" extending an agreement during its term. See generally *Deluxe Metal Furniture Co.,* 121 NLRB 995 (1958). Rather, a petition will be found timely if it is filed during the open period calculated from the expiration date of the "old," extended agreement. Id.

It is undisputed that the petition in this case was filed within the open period as calculated from the expiration date of the 1995–1996 agreement. It is also undisputed that, if the parties had mutually agreed to extend their prior 1995–1996 agreement in the manner directed by the bankruptcy court, the Board would find that the instant petition was not barred by an agreement so extended. I find no basis for affording any greater contract-bar status to a premature extension because it was imposed by a bankruptcy court, even assuming arguendo that the court had the authority to do so without the consent of all parties to the agreement.[2] Accordingly, I would find that the petition in this case was timely filed.[3]

The majority finds that the contract extension ordered by the bankruptcy court is a bar to the petition and that the premature extension doctrine should not be applied in this setting. My colleagues assert that barring the petition will stabilize the parties' collective-bargaining relationship and afford the Employer predictable terms and conditions of employment for the 6-½ months of the agreement's extension. In my colleagues' view, this will enhance the Employer's prospects for financial rehabilitation and is thus beneficial to the Employer, the Intervenor, and the employees. According to the majority, their holding does not eliminate but merely delays the employees' right to choose their bargaining representative—a delay which the majority finds justifiable in light of the competing concerns of financial and collective-bargaining stability. In this regard, the majority declines to state whether it would give bar effect to longer extensions by a bankruptcy court, or how it would apply the

this regard, we note that we have been administratively advised that the Petitioner filed a new petition to represent the Employer's employees on September 17, 1996, docketed as Case 29–RC–8679.

In disagreement with our dissenting colleague, it would be, in our view, inappropriately speculative to address theoretical contract extensions which are not before us. This is especially so given the rare and delicate legal issue here: the requisite accommodation in a specific instance between the competing statutory schemes set forth in the Bankruptcy Code and the National Labor Relations Act.

[1] The 1995–1996 agreement was effective by its terms from April 27, 1995, to April 27, 1996. The court-ordered modifications to the 1995-1996 agreement reflected certain of the concessions which the Employer had unsuccessfully sought from the Intervenor.

[2] I note that the courts are divided on whether a bankruptcy court has the authority to *modify* a collective-bargaining agreement without the consent of all parties. Compare *In re Alabama Symphony Assn.,* 155 B.R. 556 (Bkrtcy. N.D. Ala. 1993) (Bankruptcy Code section on rejection of collective-bargaining agreements does not permit court to modify agreement) and *In re Garofolo's Finer Foods, Inc.,* 117 B.R. 363 (Bkrtcy. N.D. Ill. 1990) (interim modification of agreement ordered pending completion of negotiations on concessions). For the purpose of deciding this case, I assume, without deciding, as the majority does, that the bankruptcy court had the authority to issue the order modifying and extending the 1995–1996 agreement.

[3] In light of the foregoing, I find it unnecessary to pass on the Regional Director's alternative finding that the contract-bar doctrine also did not apply to the extended agreement because it was not the product of collective bargaining.

contract-bar doctrine to additional subsequent extensions by the court in this case.

The majority's purported justifications for its restraint on employee choice are wholly unpersuasive. As the Regional Director recognized, none of the possible election results will have any effect on this Employer's efforts to reorganize its business. Likewise, there is in this case no basis for according greater primacy to the considerations of financial and collective-bargaining stability than in any other case involving a premature extension.[4] The only result of the majority's decision today is to deny the employees their right to decide for themselves whether they continue to wish to be represented by the Intervenor and to insulate the Intervenor from having to justify its claim to continued majority status. Under these circumstances, I fear that the majority's reliance on the goals of stabilizing the Employer's finances and the parties' collective-bargaining relationship may be viewed by some as an excuse to justify limitations on employees' Section 7 rights.

Finally, the Board's existing contract-bar rules are already riddled with exceptions and special circumstances. I believe that it is unwise to establish yet another exception. In this regard, I note that my colleagues imply that some bankruptcy court-ordered extensions might be so lengthy that they would not afford them contract-bar status. However, the majority provides no guidance concerning the point at which they would find that a court-ordered extension, or additional extensions of the 1995–1996 agreement in this case would not qualify for bar status.[5] Accordingly, the majority's unjustified infringement on employee free choice will only add to the existing complexity of this area of the Board's jurisprudence. Just as the courts justly require that the Board sustain a heavy burden when imposing a bargaining order which has the effect of denying employees a choice, see, *Be-Lo Stores v. NLRB*, 126 F.3d 268, 273 (4th Cir. 1997), so too the Board should sustain a high burden before denying employees an opportunity to choose a new collective-bargaining representative. The Board here has sustained neither a high burden nor, indeed, any burden beyond a verbal formulation, and I therefore dissent.

[4] In the past the Board has rarely, if ever, relied on an employer's financial condition as a basis for dismissing an election petition. In this regard, I am especially troubled by the majority's conclusion that dismissing the petition is justified, in part, because maintaining "predictable" terms and conditions of employment during the period of the extended agreement will benefit the unit employees. Surely, the Act contemplates that the employees themselves, and not this agency, will decide whether continued representation by the Intervenor is in the employees' best interest.

[5] My colleagues state that it would be inappropriately speculative to address this issue. However, the Board has consistently held that "one of the principal objectives of the contract bar policy is to provide employees the opportunity to select representatives at reasonable and *predictable* intervals" *Pacific Coast Assn. of Pulp & Paper Mfrs*., 121 NLRB 990, 993 (1958) (emphasis in original). Accord: *General Cable Corp.,* 139 NLRB 1123, 1124 (1961) (a goal of contract-bar policy is to "insure certain and predicable intervals when representation petitions could be filed"). In my view, the unit employees are entitled to know when, if ever, under the rules announced by the majority today, they will be allowed a vote on whether to retain their existing collective-bargaining representative.

APPENDIX

REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

4. The Employer and Intervenor argue that there is a contract which bars an election at this time. The Petitioner argues that there is no contract bar.

The record reveals the following facts, which are undisputed. The Employer and Intervenor were parties to a collective-bargaining agreement, effective by its terms from April 28, 1992, to April 27, 1995 (the 1992–1995 agreement). At the expiration of 1992–1995 agreement, the Employer and Intervenor signed a 1-year collective-bargaining agreement, effective from April 97, 1995, to April 27, 1996 (the 1995–1996 agreement), which extended the 1992–1995 agreement with certain modifications. These modifications included a temporary wage reduction, followed by the gradual restoration of wages, and a freeze on welfare and pension fund contributions.

On August 29, 1995, the Employer filed a voluntary petition under Chapter 11 of the U.S. Bankruptcy Code. The Employer thereafter continued to operate its business as a debtor-in-possession.

On September 27 and October 2, 1995, the Employer met with the Intervenor in an attempt to negotiate modifications to the 1995–1996 collective-bargaining agreement. The Employer sought additional economic concessions from the Intervenor, including cancellation of the gradual wage restoration, the reduction of welfare fund contributions, and other changes. However, the Intervenor refused to agree to the Employer's proposed modifications.

On October 24, 1995, pursuant to section 1113 of the Bankruptcy Code, the Employer filed a motion with the U. S. Bankruptcy Court for the Eastern District of New York, seeking authorization to reject the 1995-1996 collective-bargaining agreement. In its motion, the Employer asserted that unless it could reject the 1995-1996 collective-bargaining agreement, it would be unable to continue in business and/or formulate a meaningful reorganization plan. The Intervenor opposed the motion to reject the collective-bargaining agreement. A hearing on the motion was held on November 17, 1995.

On December 1, 1995, the bankruptcy court ordered that the Employer's motion "be granted and that the provisions of the collective bargaining agreement shall be continued for 1 year from November 17, 1995 except that it shall be modified as follows." The court ordered various modifications to the 1995–1996 agreement, which reflected some of the concessions previously requested by the Employer. Thus, although the bankruptcy court's order does not allow the Employer to completely reject the 1995–1996 collective-bargaining agreement, it orders the provisions to continue, with certain modifications providing economic relief to the Employer, until November 17, 1996.

The Petitioner filed its petition in the instant case on January 31, 1996. It is undisputed that this filing date fell within the open period corresponding to the expiration date of the 1995–1996 agreement.[2] However, the Employer and Intervenor argue

[2] *Leonard Wholesale Meats*, 136 NLRB 1000 (1962) (petition must be filed more than 60 days but less than at 90 days before the expiration

that the bankruptcy court's extension of the collective-bargaining agreement (as modified) until November 17, 1996, served to change the open period[3] for filing petitions, and that the Petitioner's current petition is therefore premature. The Employer and Intervenor argue that the contract, as currently extended, creates a bar to an election. The Employer and Intervenor further argue, as a policy matter, that the goal of preserving some stability in their labor relations—which underlies both section 1113 of the Bankruptcy Code and the Board's contract-bar doctrine—would be thwarted by the processing of an election at this time. The Employer asks that processing of the petition be stayed until the expiration of the court-modified agreement, whereas Intervenor requests that the petition be dismissed outright.

For its part, the Petitioner argues that the court's action should be treated as a premature extension of the 1995–1996 agreement, and therefore should not serve as a bar to an election. The Petitioner argues. as a policy matter that processing the instant election petition would vindicate important Section 7 rights of employees, and would not undermine the Employer's financial stability.

In establishing the open period for filing petitions and the contract-bar doctrine, the Board has attempted to strike a balance between preserving employees' right to freely choose their representative, and preserving some stability in the parties' collective-bargaining relationship. The contract-bar doctrine provides that when the contracting parties have executed a collective-bargaining agreement, they are entitled to a reasonable period of stability in their relationship without interruption. However, this doctrine applies only when the parties' contract is truly a *bilateral* and *collectively-bargained* agreement. For example, a contract in *German School of Washington, D.C.*, 260 NLRB 1250 (1980), was found not to bar an election because the contract was "not the fruit of collective bargaining, but rather was unilaterally imposed" by the Federal Republic of Germany. Id. at 1256. See also *Fugazy Continental Corp*., 231 NLRB 1344, 1345 (1977) (agreement which employer entered with Franchise Owners Association was not a collective-bargaining agreement, but rather a supplement or extension of the unilaterally imposed individual franchise agreements, and therefore not a bar); *Northeastern University*, 218 NLRB 247, 948 (1975) (faculty handbook is not a collective-bargaining agreement, and therefore not a bar). Thus, the contract-bar doctrine is not meant to protect other types of contracts or documents which are not the product of bilateral and collective bargaining, for such protection, by definition, would not further the stability of collective bargaining.

In the instant case, it is doubtful that the court-ordered extension/modification constitutes a "collective bargaining agreement" in the sense described above. The Intervenor never agreed to the extension/modification, and in fact actively opposed it. The parties never signed the document. The extension/modification was not actually the product of bilateral and collective bargaining but rather was imposed by the bankruptcy court, based on the Employer's motion to reject the parties' 1995-1996 collective-bargaining agreement.[4] Consequently, the court-ordered extension/modification appears not to fall into the category of collective-bargaining agreements which the Board's contract-bar doctrine protects for the purpose of furthering stability. *The German School*, supra.

Furthermore, even if the court-ordered extesion/-modification is considered a "collective bargaining agreement" for contract-bar purposes, allowing it to eliminate the open period in the instant proceeding would impermissibly limit employees' opportunity to change or eliminate their bargaining representative, if they choose to do so. In this regard, the extension/modification is analogous to a premature extension by the parties. See generally *Deluxe Metal Furniture Co.*, 121 NLRB 995 (1958); *H.L. Klion, Inc*., 148 NLRB 656 (1964). The Board has held that employees are entitled to an opportunity to choose their bargaining representative at reasonable and predictable intervals (i.e., during the relevant open period calculated from the expiration date of the "old" contract), and therefore that a prematurely executed contract or extension will not bar an election where a petition is filed during that open period. *H L. Klion,* supra at 660. There is no reason to allow the Employer and Intervenor to use the bankruptcy court's extension/modification to eliminate the open period, where they themselves would not have been able to do so. Furthermore, if the court orders additional extensions in the future, employees will continue to be deprived of a reasonable and predictable open period for filing petitions. Although the court's action was intended in part to allow the Employer some economic relief during, its reorganization, there is no reason to assume that it was intended to supersede the employees' right to free choice in this way.

In general, bankruptcy court proceedings do not stay or impede the Board's processing of election petitions in representation cases. *In Re American Buslines, Inc*., 151 F.Supp. 877 (D.N.E.1957) The specific issue in this case is whether the bankruptcy court's extension/modification of the collective-bargaining agreement under section 1113 of the U.S. Bankruptcy Code serves to eliminate the open period (1/28/96 to 2/26/96) which corresponded to the original expiration date of the 1995-1996 collective-bargaining agreement. It should be noted that section 1113 was enacted after the U.S. Supreme Court decided in *NLRB v. Bildisco & Bildisco*, 465 U.S. 513 (1984), that a bankruptcy court should allow debtor-employers to unilaterally reject a collective-bargaining agreement in certain circumstances. Under section 1113, a debtor-employer must first attempt to negotiate with the union any contract modifications that are "necessary" for the debtor's reorganization; the bankruptcy court may thereafter allow the employer to reject its collective-bargaining agreement only if the union has refused the proposed modifications without good cause, and if the balance of equities clearly favor rejection of the agreement. It appears therefore that section 1113 was intended to limit an *employer's* ability to unilaterally reject the product of a collec-

of the contract). The open period corresponding to the expiration date of the 1995–1996 agreement (April 27, 1996) started on January 28, 1996, and ended on February 26. 1996. The petition was filed on January 31, 1996, i.e., 87 days before the expiration of the 1996–1996 agreement.

[3] If calculated from the expiration date of the bankruptcy court's extension (Nov. 17, 1996), the open period for filing a petition would run from August 20 to September 18, 1996.

[4] The extension/modification of the parties' collective-bargaining agreement by the bankruptcy court raises numerous thorny legal issues such as whether it could "extend'' the contractual no-strike clause over the Intervenor's objections. Although these issues need not be resolved in the instant proceeding, they underscore the question of whether the extension/modification is truly a "collective bargaining agreement" for contract-bar purposes or rather a court-ordered imposition of terms and conditions of employment.

tive-bargaining relationship, while at the same time allowing the employer to obtain economic relief when necessary. To that extent, section 1113 helps to preserve the stability of the collective-bargaining relationship from unwarranted *employer* rejection. However, it does not follow that section 1113 was intended to preserve the stability of a collective-bargaining relationship as against the *employees'* potential rejection of their bargaining representative. Therefore, there is no reason to conclude that a bankruptcy court's rejection, extension or modification of a contract under section 1113 should have any limiting effect on employees' rights to freely choose their bargaining representative.

Contrary to assertions by the Employer and Intervenor, holding an election at this time will not "defeat the purpose" of the Bankruptcy Code in general, or of section 1113 in particular. First, as discussed above, it is doubtful that the "purpose" of section 1113 was to promote the stability of a collective-bargaining relationship even when the employees may no longer want the incumbent representative. Second, none of the possible election results here could reasonably be seen as causing unwarranted instability in the Employer's attempt to reorganize. One possibility is that these employees may vote to retain the Intervenor as their bargaining representative, in which case the parties will be in the same position as they were before the election. A second possibility is that employees may choose not to be represented by any labor organization, in which case the Employer would be free to make unilateral changes to obtain further economic relief during its reorganization. Finally, even if employees choose to be represented by the Petitioner, it does not necessarily follow that this choice would cause substantial economic instability. Whether the Petitioner would have to accept the contract terms as modified and extended by the bankruptcy court until November 1996, or whether the Petitioner and Employer would be immediately free to negotiate other contract terms (an issue which need not be decided in this proceeding), there is no reason to assume that the Petitioner's substitution as the employees' bargaining representative would inexorably destabilize the Employer's reorganization. It would simply mean that the Employer's obligation to bargain with its employees' bargaining representative will have transferred to another bargaining representative. It is even conceivable that the Employer could achieve greater economic relief by bargaining with the Petitioner. In short, I reject the Employer's argument that any decision by this agency to proceed with an election would defeat the purposes of Chapter 11. See *American Buslines,* supra at 40 LRRM at 2228–2229, where the alleged harm to an employer's reorganization to be caused by Board's representation case was found to be "remote," "unrealistic" and "undemonstrated."

In its brief, the Employer speculates that employees may be "dissatisfied" with their terms and conditions of employment as modified by the bankruptcy court, and that they might be "misled" into thinking that voting for the Petitioner would change those terms and conditions. I find this speculation to be totally inappropriate and irrelevant. First of all, as stated above, it is impossible to know whether employees will vote for the Petitioner, the Intervenor, or no union at all. Second, even if employees were to choose the Petitioner, it could be for any number of reasons, for example, a preference for the Petitioner's grievance processing abilities. More important, it is simply not the Employer's place, nor anyone else's place, to approve or disapprove the reasons for the employees' vote. As the court stated in *American Buslines*, supra "[T]hat problem is not the concern of the employer. It is a matter to be resolved by the affected employees themselves, under the guidance of . . . the Board." Id. at 40 LRRM at 2229. Of course, the parties are free to inform employees, in a lawful manner, that voting for the Petitioner will not guarantee better terms and conditions of employment. This is essentially an issue to be addressed during a preelection campaign; it is not a reason to prevent the election itself.

In short, the rights guaranteed in Section 7 of the National Labor Relations Act require that an election be held in this case. The Petitioner properly filed its petition during the open period corresponding to the 1995–1996 agreement expiration date. Allowing the court-ordered extension/modification to change the open period and, in effect**,** to operate as a contract bar, would defeat important employee rights. Furthermore, contrary to the Employer and Intervenor's arguments, there is no reason to believe that section 1113 was intended to limit these rights, or that holding an election would defeat the Employer's ability to reorganize under Chapter 11.

Accordingly, I conclude that the court-ordered extension/modification does not serve as a bar to an election in this case.